

(b)(6)

U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

DATE: **NOV 27 2013** Office: TEXAS SERVICE CENTER FILE: [REDACTED]

IN RE: Petitioner: [REDACTED]
Beneficiary: [REDACTED]

PETITION: Immigrant Petition for Alien Worker as a Member of the Professions Holding an Advanced Degree or an Alien of Exceptional Ability Pursuant to Section 203(b)(2) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(2)

ON BEHALF OF PETITIONER:

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office (AAO) in your case.

This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at <http://www.uscis.gov/forms> for the latest information on fee, filing location, and other requirements.** See also 8 C.F.R. § 103.5. **Do not file a motion directly with the AAO.**

Thank you,

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Director, Texas Service Center, denied the immigrant visa petition and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner seeks classification under section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2), as a member of the professions holding an advanced degree. According to Part 6 of the Form I-140, the petitioner seeks employment as a "Special Education Teacher." The petitioner has taught for [REDACTED] since 2007. At the time of filing, the petitioner was working for [REDACTED] Maryland. The petitioner asserts that an exemption from the requirement of a job offer, and thus of a labor certification, is in the national interest of the United States. The director found that the petitioner qualifies for classification as a member of the professions holding an advanced degree, but that the petitioner has not established that an exemption from the requirement of a job offer would be in the national interest of the United States.

On appeal, the petitioner submits a brief from counsel.

Section 203(b) of the Act states, in pertinent part:

(2) Aliens Who Are Members of the Professions Holding Advanced Degrees or Aliens of Exceptional Ability. –

(A) In General. – Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.

(B) Waiver of Job Offer –

(i) . . . the Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirements of subparagraph (A) that an alien's services in the sciences, arts, professions, or business be sought by an employer in the United States.

The record reflects that the petitioner qualifies as a member of the professions holding an advanced degree. The sole issue in contention is whether the petitioner has established that a waiver of the job offer requirement, and thus a labor certification, is in the national interest.

Neither the statute nor the pertinent regulations define the term "national interest." Additionally, Congress did not provide a specific definition of "in the national interest." The Committee on the Judiciary merely noted in its report to the Senate that the committee had "focused on national interest by

increasing the number and proportion of visas for immigrants who would benefit the United States economically and otherwise. . . .” S. Rep. No. 55, 101st Cong., 1st Sess., 11 (1989).

A supplementary notice regarding the regulations implementing the Immigration Act of 1990, P.L. 101-649, 104 Stat. 4978 (Nov. 29, 1990) (IMMACT90), published at 56 Fed. Reg. 60897, 60900 (Nov. 29, 1991), states, in pertinent part:

The Service believes it appropriate to leave the application of this test as flexible as possible, although clearly an alien seeking to meet the [national interest] standard must make a showing significantly above that necessary to prove the “prospective national benefit” [required of aliens seeking to qualify as “exceptional.”] The burden will rest with the alien to establish that exemption from, or waiver of, the job offer will be in the national interest. Each case is to be judged on its own merits.

In re New York State Dept of Transportation, 22 I&N Dec. 215, 217-18 (Act. Assoc. Comm’r 1998) (NYSDOT), has set forth several factors which must be considered when evaluating a request for a national interest waiver. First, a petitioner must establish that the alien seeks employment in an area of substantial intrinsic merit. *Id.* at 217. Next, a petitioner must establish that the proposed benefit will be national in scope. *Id.* Finally, the petitioner seeking the waiver must establish that the alien will serve the national interest to a substantially greater degree than would an available U.S. worker having the same minimum qualifications. *Id.* at 217-18.

While the national interest waiver hinges on prospective national benefit, the petitioner must establish that the alien’s past record justifies projections of future benefit to the national interest. *Id.* at 219. The petitioner’s subjective assurance that the alien will, in the future, serve the national interest cannot suffice to establish prospective national benefit. The inclusion of the term “prospective” is used here to require future contributions by the alien, rather than to facilitate the entry of an alien with no demonstrable prior achievements, and whose benefit to the national interest would thus be entirely speculative. *Id.*

The petitioner has established that her work as an elementary school teacher and special educator is in an area of substantial intrinsic merit. It remains, then, to determine whether the proposed benefits of the petitioner’s work will be national in scope and whether she will benefit the national interest to a greater extent than an available U.S. worker with the same minimum qualifications.

Eligibility for the waiver must rest with the alien’s own qualifications rather than with the position sought. Assertions regarding the overall importance of an alien’s area of expertise cannot suffice to establish eligibility for a national interest waiver. *Id.* at 220. Moreover, it cannot suffice to state that the alien possesses useful skills, or a “unique background.” Special or unusual knowledge or training does not inherently meet the national interest threshold. The issue of whether similarly-trained workers are available in the United States is an issue under the jurisdiction of the Department of Labor. *Id.* at 221.

The petitioner filed the Form I-140 petition on July 29, 2011. In a July 28, 2011 letter accompanying the petition, counsel stated that the petitioner's national interest waiver is based on

and her "improvement to . . . United States Education more particularly in the field of Special Education." Academic degrees and experience are elements that can contribute toward a finding of exceptional ability. See 8 C.F.R. § 204.5(k)(3)(ii)(A) and (B), respectively. Exceptional ability, in turn, is not self-evident grounds for the waiver. See section 203(b)(2)(A) of the Act. The USCIS regulation at 8 C.F.R. § 204.5(k)(2) defines "exceptional ability" as "a degree of expertise significantly above that ordinarily encountered" in a given area of endeavor. By statute, aliens of exceptional ability are generally subject to the job offer/labor certification requirement; they are not exempt by virtue of their exceptional ability. Therefore, whether a given alien seeks classification as an alien of exceptional ability, or as a member of the professions holding an advanced degree, that alien cannot qualify for a waiver just by demonstrating a degree of expertise significantly above that ordinarily encountered in her field of expertise.

In his letter accompanying the petition, counsel did not mention the *NYSDOT* guidelines or explain how the petitioner meets them. The record does not show how the petitioner's work will impact the field beyond or the state of Maryland. With regard to the petitioner's teaching duties, there is no evidence establishing that the benefits of her work would extend beyond her elementary school students such that they will have a national impact. *NYSDOT* provides examples of employment where the benefits would not be national in scope:

For instance, pro bono legal services as a whole serve the national interest, but the impact of an individual attorney working pro bono would be so attenuated at the national level as to be negligible. Similarly, while education is in the national interest, the impact of a single schoolteacher in one elementary school would not be in the national interest for purposes of waiving the job offer requirement of section 203(b)(2)(B) of the Act. As another example, while nutrition has obvious intrinsic value, the work of one cook in one restaurant could not be considered sufficiently in the national interest for purposes of this provision of the Act.

Id. at 217, n.3. In the present matter, the petitioner has not shown the benefits of her impact as an elementary school teacher beyond the students at her school and, therefore, that her proposed benefits are national in scope. In addition, the record lacks specific examples of how the petitioner's work as a teacher has influenced the special education field on a national level. At issue is whether this petitioner's contributions in the field are of such significance that she merits the special benefit of a national interest waiver, a benefit separate and distinct from the visa classification she seeks. A petitioner must demonstrate a past history of achievement with some degree of influence on the field as a whole. *Id.* at 219, n. 6.

The petitioner submitted various letters of support from administrators, teachers, parents, neighbors, and church pastors discussing her work as an educator and her community service. As some of the

letters contain similar claims addressed in other letters, not every letter will be quoted. Instead, only selected examples will be discussed to illustrate the nature of the references' claims.

Dr. [REDACTED] Principal, [REDACTED] stated:

Since SY 2008-2009, I had the pleasure of directly supervising [the petitioner] as the Special Education Teacher here at [REDACTED]. From my direct observation of her teaching abilities, I know she will be an asset to the school system and the children of [REDACTED] Md.

[The petitioner] teaches students in our primary grades. Guided by the Maryland Voluntary State Curriculum, she delivers her lessons differentiated according to the needs and abilities of her students. As a member of the First Grade Team, she regularly collaborates and plans with her grade level team.

[The petitioner] is well liked by students, parents and her colleagues. She is most appreciated for supporting schoolwide activities such as Career Day, Talent Show, Community Days and a variety of holiday programs. Both as an individual and a professional, [the petitioner] has enriched the culture of [REDACTED].

Dr. [REDACTED] comments on the petitioner's activities as a teacher at [REDACTED] but he does not indicate that the petitioner's work has had, or will continue to have, an impact beyond the students under her tutelage and the local school system that employed her.

[REDACTED] Reading Specialist, Paint Branch Elementary School, [REDACTED] stated:

I met [the petitioner] for the first time in the fall of 2007. At this time, [the petitioner] was an autism teacher with the primary team. She provided direct services to children of autism in an environment where she was the sole provider of the educational services. Presently, she has a first grade classroom that includes a more differentiated population that still includes several children of autism.

I have personally witnessed [the petitioner] grow during the four years I have known her. She consistently provides stellar instruction to all of the children in her charge. She recognizes and implements the appropriate instruction via the County's Curriculum Framework Pacing Guide. I can always count on her to meet all deadlines.

[The petitioner] has served on several of the Reading Department's committees and has presented herself as a true team player and vital member of our staff. She was a member of the Scholastic Book Fair and Reading is Fundamental Planning Committee. She helped to implement our African American Read-In Volunteer process and Parent Nights.

She often volunteers her services and her follow-through is exemplary. Her tenacity shines through whether she is working with the children or our peers. She has been a vital asset to the Paint Branch family.

Ms. [REDACTED] comments on the petitioner's effectiveness as an educator and involvement with school activities, but does not indicate how the petitioner's impact or influence as an elementary school teacher is national in scope. In addition, Ms. [REDACTED] fails to provide specific examples of how the petitioner's work has influenced the field as a whole.

Dr. [REDACTED] Instructor, stated:

I have been [the petitioner's] instructor for several courses in the Master's program at [REDACTED]

* * *

[The petitioner] is a special education instructor and she works with autistic children and general education children. Presently our country has a shortage of special education teachers . . . and we are in dire need of qualified persons to fill positions such as these. I am very pleased to see that [the petitioner] took so naturally to this field of study.

Dr. [REDACTED] asserts above that there is a "shortage" of qualified special education teachers in the United States. As the alien employment certification process was designed to address the issue of worker shortages, a shortage of qualified workers in a given field does not establish eligibility for the national interest waiver. The issue of whether similarly-trained workers are available in the U.S. is an issue under the jurisdiction of the Department of Labor. *NYSDOT* at 221.

[REDACTED] a parent whose child was taught by the petitioner at [REDACTED] School, stated:

[The petitioner] was my son's First Grade Special Education Teacher in [REDACTED] Maryland. [The petitioner] displayed the unique qualities of a teacher that loves what she does. Qualities such as patience, understanding, innovativeness, concern, personal care and attention to the welfare of students are not learned behaviors. Instead they come from the heart, and I was able to observe those special qualities in her which were showered on my son on a daily basis.

* * *

Prior to the beginning of the school year, she reached out to me to set up a parent/teacher/student meeting at my home. I was very impressed with that personal approach. This also continued after the Christmas holidays prior to the re-opening of school. It was her way of showing her love and care toward my son and his well-being. I know that

she did that for the students in her class that were under her perview [sic]. She was also able to adapt the curriculum to meet the needs of my son, and sent home daily progress reports. During the year that [the petitioner] was my son's teacher, she was always a telephone call away.

[The petitioner] is continually keeping abreast with new teaching techniques as she continues to increase her repertoire of teaching strategies. Her decision to continue her graduate studies in Special Education exemplifies her dedication to her work. She is thus able to impart new technologies and strategies in the classroom.

Ms. [REDACTED] speaks highly of the petitioner's teaching qualities, describes her interactions with the petitioner, and comments on the petitioner's continuing education. While Ms. [REDACTED] comments indicate that the petitioner works in an area of substantial intrinsic merit, her observations fail to demonstrate that the petitioner's work has influenced the field as whole, or that the petitioner has or will benefit the United States to a greater extent than other similarly qualified elementary school teachers.

The petitioner's references praise her teaching abilities and personal character, but they do not demonstrate that the petitioner's work has had an impact or influence outside of the schools where she has taught. They also do not address the *NYSDOT* guidelines which, as published precedent, are binding on all USCIS employees. See 8 C.F.R. § 103.3(c). That decision cited school teachers as an example of a profession in a field with overall national importance (education), but in which individual workers generally do not produce benefits that are national in scope. *NYSDOT* at 217, n.3.

The Board of Immigration Appeals (BIA) has held that testimony should not be disregarded simply because it is "self-serving." See, e.g., *Matter of S-A-*, 22 I&N Dec. 1328, 1332 (BIA 2000) (citing cases). The BIA also held, however: "We not only encourage, but require the introduction of corroborative testimonial and documentary evidence, where available." *Id.* If testimonial evidence lacks specificity, detail, or credibility, there is a greater need for the petitioner to submit corroborative evidence. *Matter of Y-B-*, 21 I&N Dec. 1136 (BIA 1998).

The opinions of the petitioner's references are not without weight and have been considered above. USCIS may, in its discretion, use as advisory opinions statements submitted as expert testimony. See *Matter of Caron International*, 19 I&N Dec. 791, 795 (Comm'r 1988). However, USCIS is ultimately responsible for making the final determination regarding an alien's eligibility for the benefit sought. *Id.* The submission of letters of support from the petitioner's personal contacts is not presumptive evidence of eligibility; USCIS may evaluate the content of those letters as to whether they support the alien's eligibility. See *id.* at 795-796; see also *Matter of V-K-*, 24 I&N Dec. 500, n.2 (BIA 2008) (noting that expert opinion testimony does not purport to be evidence as to "fact").

In addition to the reference letters, the petitioner submitted the following:

1. A membership certificate and a membership card for [REDACTED] the [REDACTED]
2. Degrees and academic transcripts;
3. A Maryland Educator Certificate;
4. A [REDACTED]
5. A "Certification of Good Standing" from the [REDACTED]
6. Employment verifications;
7. A Certificate of Recognition from the administration of [REDACTED] the petitioner's employer from June 1999 – May 2004, "for having been chosen as Recipient of a Bronze Certificate for 'Excellent Obedience – Class Award' in Grade One School Year 2002 to 2003";
8. A Certificate of Participation for "outstanding participation with the development of [REDACTED] (May 27, 2011);
9. A certification stating that the petitioner "has met the requirements to qualify as a Lay Teacher/Trainer in the [REDACTED]
10. A Certificate of Appreciation "for faithfully serving in the Vacation Bible School at [REDACTED];
11. A Certificate of Appreciation from the Maryland Chapter of the [REDACTED] "for leading the [REDACTED] in Comprehensive Community Clean-Up at [REDACTED] (July 12, 2011);
12. A Certificate of Appreciation from the Maryland Chapter of the [REDACTED] "for rendering her voluntary services as cultural director of the [REDACTED] Youth Council" (July 2, 2011);
13. Two Certificates of Membership for the Maryland Chapter of the [REDACTED]
14. A Certificate of Appreciation from the Maryland Chapter of the [REDACTED] for serving "as resource speaker at the [REDACTED] (June 26, 2011);
15. A Certificate of Recognition from the Maryland Chapter of the [REDACTED] for "participation as SPEAKER in the [REDACTED] Maryland Chapter Summer Camp [REDACTED] held at [REDACTED] in July 2010;
16. A Certificate of Appreciation from the Maryland Chapter of the [REDACTED] "for volunteering in teaching students with autism every Saturday from January to March of 2011"; and
17. A Certificate of Appreciation from the Maryland Chapter of the [REDACTED] "for her contribution in [REDACTED] held on the 2nd day of October, 2010."

Again, academic records, occupational experience, professional certifications, membership in professional associations, and recognition for achievements are all elements that relate to a finding of exceptional ability, but exceptional ability is not sufficient to warrant the national interest waiver. The plain language of section 203(b)(2)(A) of the Act indicates that aliens of exceptional ability are subject to the job offer requirement (including alien employment certification). Particularly significant awards may serve as evidence of the petitioner's impact and influence on her field, but

the petitioner has failed to demonstrate that the awards she received (items 7, 8, 10 – 12, 14 – 17) have more than local, regional, or institutional significance. There is no documentary evidence showing that items 1 – 17 are indicative of the petitioner's influence on the field of education at the national level.

The petitioner submitted copies of her "satisfactory" teacher evaluations from [REDACTED]. The petitioner, however, failed to demonstrate how the evaluations reflect that she has impacted the field to a substantially greater degree than other similarly qualified special educators and teachers, and how her specific work has had significant impact outside of the elementary school where she has taught.

In addition, the petitioner submitted numerous certificates of participation, completion, and attendance for training courses and seminars relating to her professional development. While taking courses and attending seminars are ways to increase one's professional knowledge and to improve as a teacher, there is nothing inherent in these activities to establish eligibility for the national interest waiver.

The petitioner submitted documentation indicating that she has provided service and support for various charitable causes, community events, and Christian ministries, but there is no documentary evidence demonstrating that petitioner's work has influenced the field of education as a whole. The petitioner also submitted photographs and other materials that document the petitioner's career and teaching activities, but they do not address the *NYSDOT* guidelines.

The director issued a request for evidence on April 4, 2012, instructing the petitioner to submit evidence to establish that the benefits of her proposed employment "will be national in scope" and that she "will serve the national interest to a substantially greater degree than would an available U.S. worker having the same minimum qualifications."

In response, the petitioner submitted a report entitled "Special Education Teacher Retention and Attrition: A Critical Analysis of the Literature"; information from the U.S. Department of Labor's *Occupational Outlook Handbook* regarding the "Job Outlook" for Special Education Teachers; a report from the President's Commission on Excellence in Special Education entitled "A New Era: Revitalizing Special Education for Children and Their Families"; an article in *Encyclopedia of the Supreme Court of the United States* about *Brown v. Board of Education*, 347 U.S. 483 (1954); information about Public Law 94-142; and a report entitled "SPeNSE: Study of Personnel Needs In Special Education." As previously discussed, general arguments or information regarding the importance of a given field of endeavor, or the urgency of an issue facing the United States, cannot by themselves establish that an individual alien benefits the national interest by virtue of engaging in the field. *NYSDOT* at 217. Such assertions and information address only the "substantial intrinsic merit" prong of *NYSDOT*'s national interest test. None of the preceding documents demonstrate that the petitioner's specific work as an elementary school teacher and special educator has influenced the field as a whole.

The director denied the petition on March 6, 2013. The director found that the petitioner failed to establish that an exemption from the requirement of a job offer would be in the national interest of the United States. The director indicated that the petitioner had not shown that the proposed benefits of her work as a special education teacher are national in scope. The director also determined that the petitioner had failed to demonstrate that her past contributions have been substantially greater than those of others in the field.

On appeal, counsel asserts that “USCIS erred in giving insufficient weight to the national educational interests enunciated in the No Child Left Behind Act of 2001 [NCLBA] as the guiding principle rather than the precedent case” *NYSDOT*. With regard to following the guidelines set forth in *NYSDOT*, by law, the USCIS does not have the discretion to ignore binding precedent. See 8 C.F.R. § 103.3(c).

Counsel notes that Congress passed the NCLBA three years after the issuance of *NYSDOT* as a precedent decision, and claims that “[t]he obscurity in the law that *NYSDOT* sought to address has been clarified,” because “Congress has spelled out the national interest with respect to public elementary and secondary school education” through such legislation. In addition, counsel contends that “the NCLB Act and the Obama Education Programs, taken collectively, provide the underlying context for the adjudication of a national interest waiver application made in conjunction with an E21 visa petition for employment as a Highly Qualified Teacher in the public school sector.”

Counsel does not support the assertion that the NCLBA modified or superseded *NYSDOT*; that legislation did not amend section 203(b)(2) of the Act. Counsel identifies no specific legislative or regulatory provisions that exempt school teachers from *NYSDOT* or reduce its impact on them. The unsupported assertions of counsel do not constitute evidence. See *Matter of Obaigbena*, 19 I&N Dec. 533, 534 n.2 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1, 3 n.2 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). In contrast, section 5 of the Nursing Relief for Disadvantaged Areas Act of 1999, Pub. L. 106-95 (November 12, 1999), specifically amended the Act by adding section 203(b)(2)(B)(ii) to create special waiver provisions for certain physicians. Because Congress not only can amend the Act to clarify the waiver provisions, but has in fact done so in direct response to *NYSDOT*, counsel has not shown that the NCLBA contains a similar legislative change.

Counsel further states:

With respect to the E21 visa classification, INA § 203(b)(2)(A) provides in relevant part that: “Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the **national . . . educational interests**, . . . of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.

Counsel, above, highlights the phrase “national . . . educational interests,” but the very same quoted passage also includes the job offer requirement, *i.e.*, the requirement that the alien’s “services . . . are sought by an employer in the United States.” By the plain language of the statute that counsel quotes on appeal, an alien professional holding an advanced degree is presumptively subject to the job offer requirement, even if that alien “will substantially benefit prospectively the national . . . educational interests . . . of the United States.” Again, neither the Act nor the NCLBA create or imply any blanket waiver for highly qualified foreign teachers. As members of the professions, teachers are included in the statutory clause at section 203(b)(2)(A) that includes the job offer requirement.

Counsel quotes remarks made by then-President George H.W. Bush when he signed the Immigration Act of 1990, which created the national interest waiver: “This bill provides for vital increases for entry on the basis of skills, infusing the ranks of our scientists and engineers and educators with new blood and new ideas.” Counsel interprets this passage to mean that Congress created the national interest waiver for “highly qualified” educators. The Immigration Act of 1990, however, was not restricted to the creation of the waiver. It was, rather, an overhaul of the entire immigration structure, creating new employment-based immigrant classifications to replace the “third preference” and “sixth preference” classifications previously in place. “[S]cientists and engineers and educators” are all members of the professions who, under the terms dictated by Congress in the Immigration Act of 1990 (as it amended the Act), are all subject to the job offer requirement.

Counsel asserts that the director “erred in disregarding evidence demonstrating the national scope of the petitioner’s proposed benefit through her effective role in serving the national educational interest of closing the achievement gap.” The record, however, contains no evidence that the petitioner’s efforts have significantly closed that gap in [REDACTED] or nationally. The national importance of “education” as a concept, or “educators” as a class, does not establish that the work of one teacher produces benefits that are national in scope. *NYSDOT* at 217, n.3. A local-scale contribution to an overall national effort does not meet the *NYSDOT* threshold. The aggregate national effect from thousands of teachers does not give national scope to the work of each individual teacher.

Counsel continues:

The national priority goal of closing the achievement gaps between minority and nonminority students, and between disadvantaged and more advantaged children is especially relevant in the context of [REDACTED] and [the petitioner’s] assigned school. The 2012 MSA Reading results show that out of the 24 Maryland school districts [REDACTED] ranked near the bottom at the “All Student” level for each MSA-covered grade level

* * *

Additionally, it is noteworthy that the updated 2012 Maryland Report Card shows that [REDACTED] did not meet its Reading proficiency AMO targets at the “All Student” level

The petitioner has worked for [REDACTED] since 2007, and thus had been there for a number of years before the administration of the 2012 MSA tests. Counsel does not explain how the 2012 MSA results for [REDACTED] (which indicate low rankings relative to other Maryland school districts) establish that the petitioner has played an effective role in "closing the achievement gap."

Counsel asserts that the petitioner "is an effective teacher in raising student achievement in STEM," but he cited no documentary evidence to support the claim. As previously discussed, the unsupported assertions of counsel do not constitute evidence. *See Matter of Obaighena*, 19 I&N Dec. at 534, n.2; *Matter of Laureano*, 19 I&N Dec. at 3, n.2; *Matter of Ramirez-Sanchez*, 17 I&N Dec. at 506. In addition, while counsel asserts that the petitioner has "proven success in raising proficiency of her students," he did not point to specific STEM test results or other documentary evidence in the record to support the assertion. Regardless, there is no documentation demonstrating that the petitioner's work has had an impact or influence outside of the school systems where she has taught.

Counsel states that factors such as "the 'Privacy Act' protecting private individuals" make it "impossible" to compare the petitioner with other qualified workers and that USCIS "should have presented its own comparable worker." The *NYSDOT* guidelines, however, do not require an item-by-item comparison of the petitioner's credentials with those of qualified United States workers. The key provision is that the petitioner must establish a record of influence on the field as a whole. Moreover, there is no provision in the statute, regulations, or *NYSDOT* requiring the director to specifically identify another equally qualified school teacher. In visa petition proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013).

Counsel contends that "the Immigration Service is requiring more from the beneficiary's credentials [] tantamount to having exceptional ability," but an individual is not required to qualify as an alien of exceptional ability in order to receive the national interest waiver. As previously discussed, the requirements for exceptional ability are separate from the threshold for the national interest waiver. It remains that the petitioner's evidence does not establish eligibility for the national interest waiver. The director did not require the petitioner to establish exceptional ability in her field. Instead, the director determined that the petitioner had not established that she "will serve the national interest to a substantially greater degree than would an available U.S. worker with the same minimum qualifications."

Counsel asserts that while the NCLBA "requirements set minimum standards for entry into teaching of core academic subjects, they have not driven strong improvements in . . . the effectiveness of teachers in raising student achievement." However, assertions regarding the need for educational reform in the United States only address the "substantial intrinsic merit" prong of *NYSDOT*'s national interest test. In addition, counsel quotes a study that concluded the "Teach For America" program "rarely had a positive impact on reading achievement." The record, however, does not include a copy of the study. Once again, the unsupported assertions of counsel do not constitute evidence. *See Matter of Obaighena* at 534, n.2; *Matter of Laureano* at 3, n.2; *Matter of Ramirez-*

Sanchez at 506. Regardless, counsel does not show that the petitioner's individual teaching efforts, after several years in the United States, have set her apart from other educators with regard to raising student achievement in [REDACTED] or nationally.

Counsel cites to studies pointing to high turnover rates and inexperience among special education teachers. Again, the issue of whether similarly-trained workers are available in the U.S. is an issue under the jurisdiction of the Department of Labor. *NYSDOT* at 221. This information shows that there is a demand for credentialed special education teachers, a demand that the labor certification process can address.

Counsel asserts that the labor certification process poses a "dilemma" for the petitioner because she possesses qualifications above the minimum required for the job she seeks. Counsel states that the labor certification guidelines "require only a bachelor's degree," and therefore "may not meet the objective of employers to hire highly qualified teachers pursuant to No Child Left Behind." On page 13 of the appellate brief, however, counsel acknowledges that the statutory definition of a "Highly Qualified Teacher" requires only a bachelor's degree, state certification, and subject matter expertise.

Section 9101(23) of the NCLBA defines the term "Highly Qualified Teacher." Briefly, by the statutory definition, a "Highly Qualified" elementary school teacher:

- has obtained full State certification as a teacher or passed the State teacher licensing examination, and holds a license to teach in such State;
- holds at least a bachelor's degree; and
- has demonstrated, by passing a rigorous State test, subject knowledge and teaching skills in reading, writing, mathematics, and other areas of the basic elementary school curriculum, or (in the case of experienced teachers not "new to the profession") demonstrates competence in all the academic subjects in which the teacher teaches based on a high objective uniform State standard of evaluation.

In addition, the petitioner submitted information from the U.S. Department of Labor's *Occupational Outlook Handbook* describing the minimum qualifications necessary to become a special education teacher:

Public school teachers are required to have at least a bachelor's degree and a state-issued certification or license.

* * *

Education

All states require public special education teachers to have at least a bachelor's degree. Some of these teachers major in elementary education or a content area, such as math or chemistry, and minor in special education. Others get a degree specifically in special education.

* * *

Some states require special education teachers to earn a master's degree in special education after earning their teaching certification.

* * *

Licenses

All states require teachers in public schools to be licensed. A license is frequently referred to as a certification.

* * *

Requirements for certification vary by state. However, all states require at least a bachelor's degree. They also require completing a teacher preparation program and supervised experience in teaching, which is typically gained through student teaching. Some states require a minimum grade point average.

Many states offer general special education licenses that allow teachers to work with students across a variety of disability categories. Others license different specialties within special education.

Teachers are often required to complete annual professional development classes to keep their license. Most states require teachers to pass a background check. Some states require teachers to complete a master's degree after receiving their certification.

Some states allow special education teachers to transfer their licenses from another state. However, some states require even an experienced teacher to pass their own licensing requirements.

The petitioner has not established that the "Highly Qualified" standard involves requirements that are significantly more stringent than those outlined in the *Occupational Outlook Handbook*, or that a public school could not obtain a labor certification for a "highly qualified teacher." Thus, the petitioner's level of education and experience are not required for "highly qualified" status under the NCLBA. Counsel, therefore, did not support the claim that the labor certification process frustrates the NCLBA's mandate for schools to employ "highly qualified teachers."

Counsel contends that a waiver would ultimately serve the interests of United States teachers, because if schools “fail to meet the high standard required under the No Child Left Behind (NCLB) Law,” the result would be “not only . . . closure of these schools but [also] loss of work for those working in those schools.” Counsel, however, offers no specific examples of school closures and teacher layoffs attributable to not meeting NCLBA standards. Again, the unsupported assertions of counsel do not constitute evidence. *See Matter of Obaighena*, 19 I&N Dec. at 534 n.2; *Matter of Laureano*, 19 I&N Dec. at 3 n.2; *Matter of Ramirez-Sanchez*, 17 I&N Dec. at 506. In addition, counsel asserts that by waiving the labor certification requirement for highly qualified special educators such as the petitioner, “more American teachers will have . . . employment opportunities” because standards will be met and schools will not be abolished. However, there are no blanket waivers for highly qualified foreign teachers. Again, USCIS grants national interest waivers on a case-by-case basis, rather than establishing blanket waivers for entire fields of specialization. *NYSDOT* at 217.

A plain reading of the statute indicates that engaging in a profession (such as teaching) does not presumptively exempt such professionals from the requirement of a job offer based on national interest. The petitioner has not established that her past record of achievement is at a level that would justify a waiver of the job offer requirement which, by law, normally attaches to the visa classification sought by the petitioner. The petitioner need not demonstrate notoriety on the scale of national acclaim, but the national interest waiver contemplates that her influence be national in scope. *Id.* at 217, n.3. More specifically, the petitioner “must clearly present a significant benefit to the field of endeavor.” *Id.* at 218. *See also id.* at 219, n.6 (the alien must have “a past history of demonstrable achievement with some degree of influence on the field as a whole”). On the basis of the evidence submitted, the petitioner has not established that a waiver of the requirement of an approved labor certification will be in the national interest of the United States.

In visa petition proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende* at 128. Here, that burden has not been met.

ORDER: The appeal is dismissed.